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To the Honorable the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly convened.

The Petition, and representation of the undersigned John Dungan, respectfully sheweth to your Honorable bodies :

That your petitioner was duly nominated, appointed, and commissioned by Joseph B. Anthony, Judge of "The Nicholson Court of Pleas for the State of Pennsylvania," on the 14th day of July, 1840, a Commissioner to represent the creditors of John Nicholson, deceased, as provided for in the act entitled "An act to settle the estate of John Nicholson and Peter Baynton," passed April 16, 1840, (see Pamphlet Laws 1840, page 364) and took the oath prescribed by the 12th section of said act, and entered upon and discharged the duties of the appointment, as directed by the act of assembly aforesaid.

And continued to act as such Commissioner aforesaid, until the 4th day of October, 1841, when he was removed from the office, and appointment aforesaid by Judge Anthony, in pursuance of the following order which he directed to be entered upon the records of said Nicholson Court at Philadelphia. "Monday, 4th October, 1841. On presentation of a communication of this date, October 2nd, from Edward H. Bonsall, Constant Guillou, and T. Mason Mitchell, Trustees named in a deed of compromise between the heirs and creditors of John Nicholson, deceased, with a letter from William Rawle and James M. Broom, Esqrs., and a list of creditors who have signed said deed accompanying the same, the Court order and direct that William Primrose and John Dungan, Commissioners under the act of April 16th, A. D. 1840, be, and they are hereby removed, and their appointments are dissolved from and after the 4th of October, 1841."

That the foregoing order of removal was made at Philadelphia, while your petitioner was attending to his offi-

cial duties at Harrisburg, at a time when no regular term of the Nicholson Court was in Session for that or any other purpose; that there was no notice given to your petitioner that an application for his removal from office had been made to said Nicholson Court, nor any specifications or charges of official misconduct, or incapacity whatever filed against him before said Court, nor any *legal cause shown* to justify the same, nor any rule to show cause why he should not be removed, nor any day set for a hearing, nor opportunity allowed him to make his defence; on the contrary, said removal was *ex-parte*, illegal, and unknown to your memorialist until after it was decreed, when his attention was called to it by a notice published in the *United States Gazette*, a daily newspaper printed in the city of Philadelphia, which proceedings are contrary to the provisions contained in the *first* and *ninth* sections of the act of assembly aforesaid.

That on the fifth day of October, 1841, the day following that on which the removal was made, Judge Anthony appointed William Primrose commissioner to represent the creditors of Nicholson, the situation from which the undersigned was illegally removed (*notwithstanding we both were appointed on the 14th day of July 1840, one to represent the creditors, and the other the heirs of Nicholson, and both removed from our first appointments on the same day, and for the same cause, so far as the proceedings on file, and of record in the Nicholson Court shows.*) That said Primrose, has ever since been receiving his *three dollars per day* out of the monies realised from the Nicholson estate, all of which proceedings is to the great damage, and in direct violation of the legal and equitable rights of your memorialist.

Your petitioner further represents, that on the 18th day of December, 1841, he made application to the Supreme Court sitting at Philadelphia, in and for the eastern district, under the advice and direction of eminent counsel, for a writ of *Quo Warranto* against *William Primrose* for the purpose of bringing before the Court, the question of the legality of his removal as aforesaid, when the Court granted a rule to show cause

why the *Quo Warranto* should not issue, which rule was enlarged from time to time, until the 22nd day of January following, on which day the writ was awarded returnable February 2nd, 1842; on the return day, the 16th inst. was appointed to hear the case. After argument, the opinion of the Court was delivered, February 21st, 1842, (See 2 Watt's and Sergeant's reports page 407,) in which it is expressly decided the *Quo Warranto* was not the proper legal remedy to decide the case. "That in all cases where a relator designs to draw into question the legality of his own expulsion from office, the proper mode of proceeding is by *Mandamus*, and not by *Quo Warranto*."

That at the time the decision upon the *Quo Warranto* was given, your petitioner was at Harrisburg; that immediately upon his return to Philadelphia, he called upon the reporter for a copy of the opinion of the Court, the manuscript being in the hands of the printer caused some delay; as soon as a copy could be obtained, it was submitted to his counsel, who advised him to make application for a *Preremptory Mandamus* against the Judge of the Nicholson Court, which was done on the 7th day of March, 1842, by filing in the Supreme Court a suggestion under oath, containing a full statement of the grounds upon which the removal of October 4th, 1841, is objected to, the 7th of March being the earliest possible time after his return from Harrisburg, when the Supreme Court granted a rule directed to said Judge Anthony, to show cause if any why the *Mandamus* should not issue, which rule was made returnable the 9th day of April following, on application of respondent's counsel the hearing upon the rule was continued to the 13th—April 13, 1842, rule was argued, whereupon the Court directed an *Alternative Mandamus* to issue, returnable the 30th instant.

April the 30th, 1842, *Alternative Mandamus* returned by the Sheriff of Lycoming county, with an affidavit setting forth that he served the same upon Judge Anthony by reading it to him, and leaving a copy with him, which service was objected to by his counsel, (resorting to every possible expedient to produce delay, and prevent

a final decision upon the merits of the case,) inasmuch as the original writ was not left with the Judge of said Nicholson Court, whereupon the service was decided by the Supreme Court to be insufficient, and directed an *Alias Alternative Mandamus* to issue, and appointed the 25th day of May, 1842, a special return day for the same, the Court having adjourned pryor to said return day, not to convene again in the eastern district, until the second Monday in December following.

That no return or answer whatever having been filed to said *Alias Mandamus*, on the return day (May 25th, 1842,) in consequence of which notice was given by his counsel, to the attorney for Judge Anthony, after the return day, and before any answer was filed, that we intended to make application to the Supreme Court, then sitting at Harrisburg, in and for the middle district, on the 11th day of June, 1842, for judgment of restoration by default, and a *Peremptory Mandamus* to restore, &c., which on application the Court refused to hear, or take cognizance of, out of the district in which the *Mandamus* issued. In consequence of the Court adjourning before the return day, and refusing to hear the case out of the eastern district, your memorialist has been compelled to wait until the present term to have his case decided.

That your memorialist applied to the Legislature by petition (at the adjourned session in 1842,) for a special act of Assembly, to authorise and require the Supreme Court to hear and decide the case at Harrisburg, which act the Legislature neglected to pass, that he has at all times persevered and used every effort, and all due diligence, and is extremely anxious to have the legal questions involved in his case decided, but that he has in every effort been opposed by the opposite party, and his counsel, who have resorted to every possible expedient to prevent a final decision upon the merits of the case.

That your petitioner has experienced great loss and inconvenience in having been removed at the time, and in the manner in which it took place, having been thrown out of all employment in an illegal manner, without the least notice whatever, at a time of great distress, and em-

barrassment in the community ; that he accepted the appointment, and entered upon the discharge of its duties, and prepared himself to attend to the same by bringing his family from Philadelphia, to reside at Harrisburg, under the confident expectation of continuing in office the length of time specified in the first section of the act of Assembly aforesaid.

Your petitioner further represents to your Honorable bodies, that the Supreme Court now sitting at Philadelphia, in and for the eastern district, has appointed the 16th day of January, 1843, to hear the case, on which day the case will be argued, unless the Legislature interferes with the act of Assembly under which the same is brought before the Court.

Your petitioner has observed with regret, that a bill has been reported in the House of Representatives for the immediate repeal of the Nicholson Court, and Board of Commissioners constituted under the act of Assembly aforesaid ; your memorialist does not hesitate to say that he is prepared to show that the Nicholson Court, and Board of Commissioners have (in relation to his removal, and in other instances) done official acts in direct violation of the provisions of said act of Assembly, and that they should be made to answer in the manner pointed out by the constitution of this commonwealth ; he therefore respectfully and earnestly remonstrates against repealing the act aforesaid, and thereby permitting the officers to escape punishment, without first instituting a strict investigation into their official acts.

I would respectfully suggest to your Honorable bodies that the Judge of said Nicholson Court, and board of Commissioners are guilty of official misconduct, and have acted in direct violation, and contempt of the act of Assembly aforesaid, in the following particulars, amongst others.

1st. That the Board of Commissioners in compromising in the latter part of the year 1841, with persons in several of the Northern Counties, who claimed title to Lands alleged to be the property of Nicholson, made it one of the terms of compromising, that there should be

paid to the Commissioners by the party compromising, *Five dollars*, and upwards upon each contract, in consequence of which several hundred dollars, was paid over to the Commissioners before it was known whether the compromises would be confirmed by the Nicholson Court, or not, which is in direct violation of the 5th Section of the act of 16th April, 1840, viz: "*The Board shall fix the terms and conditions on which compromises and sales shall be made, and upon confirmation of such contracts by the said Court, and deposit of the consideration money or securities into the said Court, conveyances shall be made, &c.*"

The act expressly provides that all monies are to be paid into the Nicholson Court, not however until after the sales or compromises are confirmed in a judicial manner, so that the Commissioners have no authority whatever to receive any money, except an allowance not exceeding *three dollars per day* for their services, to be approved of and paid by the Judge of the Nicholson Court, *out of the funds in court*, in the manner pointed out by the 9th section of said act.

That an investigation should be made for the purpose of ascertaining, whether there is not a large sum remaining in the hands of the Commissioners who received it, of the money advanced as aforesaid, on compromises which have not as yet been confirmed by the Nicholson Court, and which money of right belongs to those who paid it, and if so, that it is a misdemeanor in those who retain it.

2nd. That Joseph B. Anthony, Judge of said Nicholson Court, is guilty of official misconduct, in directing the sale of lands advertised to be sold at Pittsburg, on the 24th day of October, 1842, before it was certified to him by the Commissioners, and filed in the Nicholson Court, that the Board after notifying the person in possession or those claiming title to any of the lands alleged to be the property of Nicholson, to come forward and compromise, and that they failed to do so, or that the Board could not effect a compromise on such terms as they deemed expedient, as directed by the 4th section of said act, which is as follows: "*And in case a compromise*

cannot be thus made by the said Commissioners with any claimant, they shall report the same to the Judge of the said Court, who thereupon, shall issue his process to the said Commissioners, commanding them or a majority of them to sell such lands at public sale, &c." That the *ex-parte* course adopted, and pursued by the Court, and Commissioners, must have had the effect of libelling the title to the lands of at least *fifty thousand* of the citizens of this commonwealth, and thereby inflicting upon them a lasting injury, before those claiming, or in possession of the lands were allowed the opportunity provided for them in the act of Assembly aforesaid, to prove before the Board the legality of their title.

That in the advertisement for the sale of western lands, notice is given that the Commissioners will require *ten per cent.* of the purchase money to be paid at the time of sale, before it was known whether any of the contracts would ever be confirmed by the Nicholson Court, so that it is impossible to estimate the amount of money the commissioners may have received for lands, the sales of which will never be confirmed, which is an imposition upon those who may have been prevailed upon to pay over their money under such circumstances, because it is in direct opposition to the provisions contained in the act of Assembly aforesaid, and ought therefore to be strictly investigated by your Honorable bodies.

3d. That Joseph B. Anthony, Judge of said Nicholson Court, is guilty of official misconduct in ordering and directing John D. Creigh, and John Dungan, two of the Commissioners under said act, to suspend visiting the Counties of *Columbia, Wayne, Bradford, Luzerne, Northumberland, Lycoming and Susquehanna*, in the months of August, September, and October, 1841, after the Commissioners had given public notice in the newspapers, and by handbills of the times, and places at which they would attend for the purpose of compromising the Nicholson lands in those counties, that a letter was received from said Judge Anthony, dated July 14th, 1841, expressing satisfaction that they were proceeding to the discharge of their official duties, in the same letter the Judge remarks as follows in

relation to *Primrose* leaving the Board, and neglecting to meet with them, or resign: "Mr. Primrose, I feel confident, that he does not intend to resume his official duties at the Board, unless under some new arrangement."

The Board advertised to be at Danville, Columbia county, on the 16th day of August, 1841; a letter was received at Harrisburg, August 14th, from Judge Anthony, dated Williamsport, August 12th, 1841, directing the Commissioners to suspend further proceedings, and not to attend at the places designated in their advertisements to compromise, &c.; the order was received so near the time of meeting, that we had not sufficient time to counteract our advertisements, so that several hundred persons attended in the Counties designated, to meet the Board, at great disadvantage and expense, for no purpose, the Commissioners having been prohibited by Judge Anthony from meeting them; that said Judge alleges as an excuse for for such an extraordinary course on his part, that there was some difficulty between *Primrose*, at that time Commissioner for the heirs of Nicholson, and your petitioner, and that a compromise was in the course of being entered into between the heirs and creditors of Nicholson, and that all further proceedings should be delayed until the same was agreed upon.

That the 9th section of said act provides that a majority of the Board shall have power to act, &c.; and when it is recollected the state Commissioner was one of the Board acting at the time, and joined in the advertisement which we were prohibited from carrying into effect, and that the state is entitled to the amount of her liens, and the expense of the Nicholson Court, out of the first monies realised from the lands, before the heirs and creditors can receive one cent; therefore such a course at that time on the part of Judge Anthony, produced a delay of several months, and was an official act that ought to be strictly investigated.

That Joseph B. Anthony, Judge of said Nicholson Court, afterwards permitted John R. Dean, and Primrose Commissioners on the part of the heirs and creditors, to visit the same section of country, and discharge the offi-

cial duties which he prohibited us from doing, the state Commissioner not being with them, or taking any part in their official acts.

4th. That Joseph B. Anthony, Judge of said Nicholson Court has shown himself to be incompetent to the discharge of his official duties, or that he acted from improper motives. In assigning upon the record of the Nicholson Court at Philadelphia, as cause for his removing your petitioner on the 4th day of October 1841, from the office of Commissioner or the part of the creditors as aforesaid, a communication from three persons who were only named as Trustees in a deed of compromise between the creditors, and heirs, which was not legally executed by the respective parties to the same, and even if it had, that there was no covenants, or agreements whatever contained in said projected deed of compromise, conferring upon the Trustees, or board of counsel therein named, the least particle of authority to interfere in the appointment or removal of Commissioners under the act of assembly aforesaid, that there is no evidence on file, or of record in said Nicholson Court, to show that a single creditor of the estate petitioned, or asked for his removal from office, and that the same was carried into effect without any notice, or hearing whatever, as specified in the first part of this memorial.

5th. That Joseph B. Anthony, Judge of said Nicholson Court, has shown himself to be incompetent to the discharge of his official duties, by adopting on the 30th day of September 1841, rules of Court to carry into effect the deed of compromise between the heirs, and creditors of Nicholson, and appointing three standing auditors for the Nicholson Court, under the same, and permitting the auditors so appointed to file in said court official reports of their proceedings, before there is any evidence placed upon record to show that the aforesaid deed of compromise was, or is legally executed, or that the Trustees, and Board of Counsel therein named had accepted their several and respective trusts; on the contrary, as late as the 3d day of January, 1842, it is entered upon the minutes of the Nicholson Court at Philadelphia,

that Mr. Guillou one of the Trustees named in the deed of trust, informed Judge Anthony, that said deed of compromise had not at that time been received by the Trustees from the heirs of Nicholson, one of the contracting parties to the same.

6th. That Joseph B. Anthony, Judge of said Nicholson Court, is guilty of a misdemeanor in office by paying over for the use of James Tait *two hundred dollars* of the monies in the Nicholson court, arising from the compromises, or sales of the Nicholson lands, there being no law whatever to authorize the Judge to pay said Tait one cent out of the funds in Court; that all monies received and paid into the Nicholson Court under the act of assembly aforesaid, is the same as money in the State Treasury, to be applied in the *first* place to pay the expenses allowed by the act of assembly aforesaid, and *second* to reimburse the State Treasury the expenses of the Nicholson Court; *third* to satisfy the commonwealth's liens against the estate; that he had no authority whatever to pay over any monies received in the Nicholson court, other than for the purposes specified in said act; that in advancing the \$200, for the use of James Tait, (who is acting as a private clerk to the commissioners, without any authority given them by law to appoint a clerk) he has acted in contempt of, and contrary to the 15th section of the act entitled, "An act to provide revenue to meet the demands on the State Treasury, and for other purposes," passed May 4th, 1841.

7th. That Joseph B. Anthony, Judge of said Nicholson Court, is guilty of official misconduct, by practising as an attorney, or counsellor at law, in the courts of justice since his appointment as Judge of "The Nicholson court of Pleas for the State of Pennsylvania," which is strictly prohibited by the 75th section of the act entitled "An act relative to the organization of the courts of justice," passed April 14th, 1834, which is as follows: "*No Judge of any Court of this Commonwealth, shall practise as an attorney in any Court of Justice in this Commonwealth, or elsewhere.*"

That your petitioner respectfully prays your Honor-

able bodies to appoint a committee to investigate the official conduct of said Judge Anthony, as you are authorised to do by the constitution of this commonwealth, that your memorialist pledges himself to prove all the facts contained in the foregoing seven specifications, with many others that will occupy too much time, and space to enumerate in this memorial.

That your petitioner further respectfully represents, in case your Honorable bodies should unconditionally repeal the act creating the Nicholson Court, before the question in the Supreme Court in relation to his removal from office is decided, great injustice will be done him, that he has been at an expense of upwards of *Three hundred dollars*, in bringing the question before the Court, in order to have his legal rights protected, in the event of a decision in his favour, he will have an opportunity of claiming damages under the *Mandamus* act, passed June 16th 1836, for the injury and loss he has sustained by his illegal removal from office; on the contrary, if your Honorable bodies repeal the act of April 16th 1840, before the decision upon the *Mandamus* is given, the Court will refuse to give an opinion, or decide the case, so that all the expense, and anxiety he has been at will be of no avail, and he will be deprived of a chance to claim damages, or redress for the injury he has sustained, because the question in relation to the legality of his removal, which will determine his right to recover damages, the Supreme Court will refuse to decide, in case the act is repealed, he will be left without a remedy to obtain redress.

In relation to the propriety of repealing the act creating the Nicholson Court, and Board of Commissioners, your memorialist does not intend offering a single remark, the expediency of such a course the Legislature must, as they undoubtedly will determine from all the circumstances; he only asks that no hasty measures may be adopted by means of which his legal rights will be taken from him, at the same time that no one will be benefited; he therefore asks your Honorable bodies, that when about to decide upon the repeal of said Court, that he claims as a citizen of this Commonwealth protection at your hands.

I would respectfully suggest, in case it is deemed requisite to put an immediate stop to all further proceedings on the part of the Nicholson Court, and Board of Commissioners, that a joint resolution could be passed, suspending all action on the part of the Court, and Commissioners, until the first Monday in March next, which will be a sufficient length of time to prepare any act that may be necessary upon the subject, and for the Supreme Court to decide the *Mamdamus* case.

Your Petitioner therefore respectfully prays your Honorable bodies, to suspend any further action in relation to the Nicholson Court, and Board of Commissioners, until the first Monday in March next (1843,) unless to pass a joint resolution as above referred to, that your petitioner respectfully represents to your Honorable bodies, provided the aforesaid case before the Supreme Court, is not finally determined by the above time, he will ask no further delay, or indulgence.

And your petitioner will as in duty bound, ever pray, &c.

JOHN DUNGAN,

Commissioner appointed to represent the creditors
in the settlement of John Nicholson's estate, as
provided for in the act of April 16th, 1840.

Philadelphia, January 7th, 1842.

